

Representative Ryan D. Wilcox proposes the following substitute bill:

DUI TESTING AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends provisions related to testing of bodily fluids for purposes of an investigation of driving under the influence.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health and Human Services to:
 - test blood and urine samples for both drugs and alcohol;
 - provide the testing results in a timely manner; and
 - provide test results through a secure medium to the Driver License Division and relevant law enforcement agencies;
- ▶ amends a provision allowing the use of a blood and urine test in certain administrative proceedings;
- ▶ enacts provisions regarding permissible uses of a blood and urine test by the Driver License Division;
- ▶ amends provisions related to shortening a driver license suspension, in certain circumstances, for a person not participating in a 24-7 sobriety program;
- ▶ requires the Department of Public Safety to make rules to establish standards for proper usage and administration of oral fluid and portable breath tests as part of a



field sobriety test;

▸ requires law enforcement agencies to provide training on the use of oral fluid and portable breath tests as part of a field sobriety test; and

▸ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-1-216, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-8-406, as renumbered and amended by Laws of Utah 2023, Chapter 306

26B-8-407, as renumbered and amended by Laws of Utah 2023, Chapter 306

41-6a-509, as last amended by Laws of Utah 2023, Chapters 239, 384

41-6a-515.6, as enacted by Laws of Utah 2017, Chapter 283

53-3-104, as last amended by Laws of Utah 2021, Chapter 284

ENACTS:

53-3-111, Utah Code Annotated 1953

53-25-102, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26B-1-216** is amended to read:

26B-1-216. Powers and duties of the department -- Quality and design.

The department shall:

(1) monitor and evaluate the quality of services provided by the department including:

(a) in accordance with Part 5, Fatality Review, monitoring, reviewing, and making recommendations relating to a fatality review;

(b) overseeing the duties of the child protection ombudsman appointed under Section **80-2-1104**; and

(c) conducting internal evaluations of the quality of services provided by the department and service providers contracted with the department;

- 57 (2) conduct investigations described in Section 80-2-703; ~~and~~
- 58 (3) develop an integrated human services system and implement a system of care by:
- 59 (a) designing and implementing a comprehensive continuum of services for individuals
- 60 who receive services from the department or a service provider contracted with the department;
- 61 (b) establishing and maintaining department contracts with public and private service
- 62 providers;
- 63 (c) establishing standards for the use of service providers who contract with the
- 64 department;
- 65 (d) coordinating a service provider network to be used within the department to ensure
- 66 individuals receive the appropriate type of services;
- 67 (e) centralizing the department's administrative operations; and
- 68 (f) integrating, analyzing, and applying department-wide data and research to monitor
- 69 the quality, effectiveness, and outcomes of services provided by the department~~[-]; and~~
- 70 (4) (a) coordinate with the Driver License Division, the Department of Public Safety,
- 71 and any other law enforcement agency to test and provide results of blood or urine samples
- 72 submitted to the department as part of an investigation for a driving offense that may have
- 73 occurred and there is reason to believe the individual's blood or urine may contain:
- 74 (i) alcohol; or
- 75 (ii) other drugs or substances that the department reasonably determines could impair
- 76 an individual or that is illegal for the individual to possess or consume; and
- 77 (b) ensure that the results of the test described in Subsection (4)(a) are provided
- 78 through a secure medium and in a timely manner.

79 Section 2. Section **26B-8-406** is amended to read:

80 **26B-8-406. Disclosure of health data -- Limitations.**

81 The department may not make a disclosure of any identifiable health data unless:

- 82 (1) one of the following persons has consented to the disclosure:
- 83 (a) the individual;
- 84 (b) the next-of-kin if the individual is deceased;
- 85 (c) the parent or legal guardian if the individual is a minor or mentally incompetent; or
- 86 (d) a person holding a power of attorney covering such matters on behalf of the
- 87 individual;

88 (2) the disclosure is to a governmental entity in this or another state or the federal
89 government, provided that:

90 (a) the data will be used for a purpose for which they were collected by the department;
91 and

92 (b) the recipient enters into a written agreement satisfactory to the department agreeing
93 to protect such data in accordance with the requirements of this part and department rule and
94 not permit further disclosure without prior approval of the department;

95 (3) the disclosure is to an individual or organization, for a specified period, solely for
96 bona fide research and statistical purposes, determined in accordance with department rules,
97 and the department determines that the data are required for the research and statistical
98 purposes proposed and the requesting individual or organization enters into a written
99 agreement satisfactory to the department to protect the data in accordance with this part and
100 department rule and not permit further disclosure without prior approval of the department;

101 (4) the disclosure is to a governmental entity for the purpose of conducting an audit,
102 evaluation, or investigation of the department and such governmental entity agrees not to use
103 those data for making any determination affecting the rights, benefits, or entitlements of any
104 individual to whom the health data relates;

105 (5) the disclosure is of specific medical or epidemiological information to authorized
106 personnel within the department, local health departments, public health authorities, official
107 health agencies in other states, the United States Public Health Service, the Centers for Disease
108 Control and Prevention (CDC), or agencies responsible to enforce quarantine, when necessary
109 to continue patient services or to undertake public health efforts to control communicable,
110 infectious, acute, chronic, or any other disease or health hazard that the department considers to
111 be dangerous or important or that may affect the public health;

112 (6) (a) the disclosure is of specific medical or epidemiological information to a "health
113 care provider" as defined in Section [78B-3-403](#), health care personnel, or public health
114 personnel who has a legitimate need to have access to the information in order to assist the
115 patient or to protect the health of others closely associated with the patient; and

116 (b) this Subsection (6) does not create a duty to warn third parties;

117 (7) the disclosure is necessary to obtain payment from an insurer or other third-party
118 payor in order for the department to obtain payment or to coordinate benefits for a patient; [or]

(8) the disclosure is to the subject of the identifiable health data[-]; or

(9) the disclosure is limited to the results of a blood or urine test and the disclosure is:

(a) to the Driver License Division, as authorized by Section [53-3-111](#); or

(b) to the requesting law enforcement agency as part of an investigation, as authorized by Subsection [26B-1-216](#)(4).

Section 3. Section **26B-8-407** is amended to read:

26B-8-407. Disclosure of health data -- Discretion of department -- Exception.

(1) Any disclosure provided for in Section [26B-8-406](#) shall be made at the discretion of the department.

(2) Notwithstanding Subsection (1), the disclosure provided for in:

(a) Subsection [26B-8-406](#)(4) shall be made when the requirements of that paragraph are met[-]; and

(b) Subsection [26B-8-406](#)(9) is not discretionary.

Section 4. Section **41-6a-509** is amended to read:

41-6a-509. Driver license suspension or revocation for a driving under the influence violation.

(1) (a) The Driver License Division shall, if the person is 21 years old or older at the time of arrest:

(i) suspend for a period of 120 days the operator's license of a person convicted for the first time under Section [41-6a-502](#) or [76-5-102.1](#); or

(ii) revoke for a period of two years the license of a person if:

(A) the person has a prior conviction as defined under Subsection [41-6a-501](#)(2); and

(B) the current violation under Section [41-6a-502](#), [76-5-102.1](#), or [76-5-207](#) is committed within a period of 10 years from the date of the prior violation.

(b) (i) If a person elects to become an interlock restricted driver under Subsection [53-3-223](#)(10)(a), the Driver License Division may not suspend the operator's license for a violation of Section [41-6a-502](#) as described in Subsection (1)(a)(i) unless the person fails to complete 120 days of the interlock restriction.

(ii) If a person elects to become an interlock restricted driver under Subsection [53-3-223](#)(10)(a), and the person fails to complete the full 120 days of interlock restriction, the Driver License Division:

(A) shall suspend the operator's license as described in Subsection (1)(a)(i) for a period of 120 days from the date the ignition interlock system was removed from the vehicle; and

(B) may not reduce the 120-day suspension for any days the person was compliant with the interlock restriction under Subsection 53-3-223(10)(a).

(c) (i) If a person elects to become an interlock restricted driver under Subsection 41-6a-521(7), the Driver License Division may not suspend the operator's license for a violation of Section 41-6a-502 as described in Subsection (1)(a)(i) unless the person fails to complete three years of the interlock restriction under Subsection 41-6a-521(7).

(ii) If a person elects to become an interlock restricted driver under Subsection 41-6a-521(7), and the person fails to complete the full three years of interlock restriction, the Driver License Division:

(A) shall suspend the operator's license as described in Subsection (1)(a)(i) for a period of 120 days from the date the ignition interlock system was removed from the vehicle; and

(B) may not reduce the 120-day suspension for any days the person was compliant with the interlock restriction under Subsection 41-6a-521(7).

(2) The Driver License Division shall, if the person is 19 years old or older but under 21 years old at the time of arrest:

(a) suspend the person's driver license until the person is 21 years old or for a period of one year, whichever is longer, if the person is convicted for the first time of a violation under Section 41-6a-502, 76-5-102.1, or 76-5-207 of an offense that was committed on or after July 1, 2011;

(b) deny the person's application for a license or learner's permit until the person is 21 years old or for a period of one year, whichever is longer, if the person:

(i) is convicted for the first time of a violation under Section 41-6a-502, 76-5-102.1, or 76-5-207 of an offense committed on or after July 1, 2011; and

(ii) has not been issued an operator license;

(c) revoke the person's driver license until the person is 21 years old or for a period of two years, whichever is longer, if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current violation under Section 41-6a-502, 76-5-102.1, or 76-5-207 is committed within a period of 10 years from the date of the prior violation; or

(d) deny the person's application for a license or learner's permit until the person is 21 years old or for a period of two years, whichever is longer, if:

- (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);
- (ii) the current violation under Section 41-6a-502, 76-5-102.1, or 76-5-207 is committed within a period of 10 years from the date of the prior violation; and
- (iii) the person has not been issued an operator license.

(3) The Driver License Division shall, if the person is under 19 years old at the time of arrest:

(a) suspend the person's driver license until the person is 21 years old if the person is convicted for the first time of a violation under Section 41-6a-502, 76-5-102.1, or 76-5-207;

(b) deny the person's application for a license or learner's permit until the person is 21 years old if the person:

(i) is convicted for the first time of a violation under Section 41-6a-502, 76-5-102.1, or 76-5-207; and

(ii) has not been issued an operator license;

(c) revoke the person's driver license until the person is 21 years old if:

- (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
- (ii) the current violation under Section 41-6a-502, 76-5-102.1, or 76-5-207 is committed within a period of 10 years from the date of the prior violation; or

(d) deny the person's application for a license or learner's permit until the person is 21 years old if:

- (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);
- (ii) the current violation under Section 41-6a-502, 76-5-102.1, or 76-5-207 is committed within a period of 10 years from the date of the prior violation; and
- (iii) the person has not been issued an operator license.

(4) The Driver License Division shall suspend or revoke the license of a person as ordered by the court under Subsection (9).

(5) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(6) If a conviction recorded as impaired driving is amended to a driving under the influence conviction under Section 41-6a-502, 76-5-102.1, or 76-5-207 in accordance with Subsection 41-6a-502.5(3)(a)(ii), the Driver License Division:

(a) may not subtract from any suspension or revocation any time for which a license was previously suspended or revoked under Section 53-3-223 or 53-3-231; and

(b) shall start the suspension or revocation time under Subsection (1) on the date of the amended conviction.

(7) A court that reported a conviction of a violation of Section 41-6a-502, 76-5-102.1, or 76-5-207 for a violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b) prior to completion of the suspension period if the person:

(a) completes at least six months of the license suspension;

(b) completes a screening;

(c) completes an assessment, if it is found appropriate by a screening under Subsection (7)(b);

(d) completes substance abuse treatment if it is found appropriate by the assessment under Subsection (7)(c);

(e) completes an educational series if substance abuse treatment is not required by an assessment under Subsection (7)(c) or the court does not order substance abuse treatment;

(f) has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b);

(g) has complied with all the terms of the person's probation or all orders of the court if not ordered to probation; and

(h) (i) is 18 years old or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b); or

(ii) is under 18 years old and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b).

(8) If the court shortens a person's license suspension period in accordance with the requirements of Subsection (7), the court shall forward the order shortening the person's suspension period to the Driver License Division in a manner specified by the division prior to the completion of the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b).

(9) (a) (i) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Section 41-6a-502, 76-5-102.1, or 76-5-207 to be suspended or revoked for an additional period of 90 days, 120 days, 180 days, one year, or two years to remove from the highways those persons who have shown they are safety hazards.

(ii) The additional suspension or revocation period provided in this Subsection (9) shall begin the date on which the individual would be eligible to reinstate the individual's driving privilege for a violation of Section 41-6a-502, 76-5-102.1, or 76-5-207.

(b) If the court suspends or revokes the person's license under this Subsection (9), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

(10) (a) The court shall notify the Driver License Division if a person fails to complete all court ordered:

- (i) screenings;
- (ii) assessments;
- (iii) educational series;
- (iv) substance abuse treatment; and
- (v) hours of work in a compensatory-service work program.

(b) Subject to Subsection 53-3-218(3), upon receiving the notification described in Subsection (10)(a), the division shall suspend the person's driving privilege in accordance with Subsection 53-3-221(2).

(11) (a) A court that reported a conviction of a violation of Section 41-6a-502 to the Driver License Division may shorten the suspension or revocation period imposed under Subsection (1) before completion of the suspension or revocation period if the person:

(i) is participating in or has successfully completed a 24-7 sobriety program as defined in Section 41-6a-515.5; [or]

(ii) (A) is participating in or has successfully completed a problem solving court program approved by the Judicial Council, including a driving under the influence court program or a drug court program; and

(B) has elected to become an interlock restricted driver as a condition of probation during the remainder of the person's suspension or revocation period in accordance with Section [41-6a-518](#)~~[-];~~ or

(iii) has had their operator license suspended under Subsection (1)(a)(i), and the court does not have a problem solving court program approved by the Judicial Council or access to a 24-7 sobriety program as defined in Section [41-6a-515.5](#), if the person:

(A) has installed an ignition interlock device in any vehicle owned or driven by the person in accordance with Section [53-3-1007](#); and

(B) did not inflict bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner.

(b) If a court shortens a person's license suspension or revocation period in accordance with the requirements of this Subsection (11), the court shall forward the order shortening the person's suspension or revocation period to the Driver License Division in a manner specified by the division.

(c) The court shall notify the Driver License Division, in a manner specified by the Driver License Division, if a person fails to complete or comply with a condition that allowed the court to shorten the person's license suspension or revocation period under Subsection (11)(a).

(d) (i) (A) Upon receiving the notification described in Subsection (11)(c), for a first offense, the division shall suspend the person's driving privilege for a period of 120 days from the date of notice.

(B) For a suspension described under Subsection (11)(d)(i)(A), no days shall be subtracted from the 120-day suspension period for which a driving privilege was previously suspended under this section or Section [53-3-223](#), if the previous suspension was based on the same occurrence upon which the conviction under Section [41-6a-502](#) is based.

(ii) (A) Upon receiving the notification described in Subsection (11)(c), for a second or subsequent offense, the division shall revoke the person's driving privilege for a period of two years from the date of notice.

(B) For a license revocation described in Subsection (11)(d)(ii)(A), no days shall be subtracted from the two-year revocation period for which a driving privilege was previously revoked under this section or Section 53-3-223, if the previous revocation was based on the same occurrence upon which the conviction under Section 41-6a-502 is based.

Section 5. Section 41-6a-515.6 is amended to read:

41-6a-515.6. Field sobriety test training.

Each law enforcement agency shall ensure that each peace officer receives training on the current standard field sobriety testing guidelines established by the National Highway Traffic Safety Administration and in accordance with Section 53-25-102.

Section 6. Section 53-3-104 is amended to read:

53-3-104. Division duties.

The division shall:

(1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:

(a) for examining applicants for a license, as necessary for the safety and welfare of the traveling public;

(b) for acceptable documentation of an applicant's identity, Social Security number, Utah resident status, Utah residence address, proof of legal presence, proof of citizenship in the United States, honorable or general discharge from the United States military, and other proof or documentation required under this chapter;

(c) for acceptable documentation to verify that an individual is homeless as verified by the Department of Workforce Services, for purposes of residency, address verification, and obtaining a fee waiver;

(d) regarding the restrictions to be imposed on an individual driving a motor vehicle with a temporary learner permit or learner permit;

(e) for exemptions from licensing requirements as authorized in this chapter;

(f) establishing procedures for the storage and maintenance of applicant information provided in accordance with Section 53-3-205, 53-3-410, or 53-3-804; and

(g) to provide educational information to each applicant for a license, which information shall be based on data provided by the Division of Air Quality, including:

(i) ways drivers can improve air quality; and

336 (ii) the harmful effects of vehicle emissions;
337 (2) examine each applicant according to the class of license applied for;
338 (3) license motor vehicle drivers;
339 (4) file every application for a license received by the division and shall maintain
340 indices containing:
341 (a) all applications denied and the reason each was denied;
342 (b) all applications granted; and
343 (c) the name of every licensee whose license has been suspended, disqualified, or
344 revoked by the division and the reasons for the action;
345 (5) suspend, revoke, disqualify, cancel, or deny any license issued in accordance with
346 this chapter;
347 (6) file all accident reports and abstracts of court records of convictions received by the
348 division under state law;
349 (7) maintain a record of each licensee showing the licensee's convictions and the traffic
350 accidents in which the licensee has been involved where a conviction has resulted;
351 (8) consider the record of a licensee upon an application for renewal of a license and at
352 other appropriate times;
353 (9) search the license files, compile, and furnish a report on the driving record of any
354 individual licensed in the state in accordance with Section 53-3-109;
355 (10) develop and implement a record system as required by Section 41-6a-604;
356 (11) in accordance with Section 53G-10-507, establish:
357 (a) procedures and standards to certify teachers of driver education classes to
358 administer knowledge and skills tests;
359 (b) minimal standards for the tests; and
360 (c) procedures to enable school districts to administer or process any tests for students
361 to receive a class D operator's license;
362 (12) in accordance with Section 53-3-510, establish:
363 (a) procedures and standards to certify licensed instructors of commercial driver
364 training school courses to administer the skills test;
365 (b) minimal standards for the test; and
366 (c) procedures to enable licensed commercial driver training schools to administer or

process skills tests for students to receive a class D operator's license;

(13) provide administrative support to the Driver License Medical Advisory Board created in Section [53-3-303](#);

(14) upon request by the lieutenant governor, provide the lieutenant governor with a digital copy of the driver license or identification card signature of an individual who is an applicant for voter registration under Section [20A-2-206](#); ~~and~~

(15) in accordance with Section [53-3-407.1](#), establish:

(a) procedures and standards to license a commercial driver license third party tester or commercial driver license third party examiner to administer the commercial driver license skills tests;

(b) minimum standards for the commercial driver license skills test; and

(c) procedures to enable a licensed commercial driver license third party tester or commercial driver license third party examiner to administer a commercial driver license skills test for an applicant to receive a commercial driver license~~[-]; and~~

(16) receive from the Department of Health and Human Services a result from a blood or urine test of an individual arrested for driving under the influence and use the blood or urine test result in an administrative hearing or agency review involving the individual who is the subject of the blood or urine test as described in Section [53-3-111](#).

Section 7. Section **53-3-111** is enacted to read:

53-3-111. Blood and urine test reports -- Permissible uses and restrictions.

(1) The division shall receive a result of a blood or urine test report in accordance with Title 26B, Chapter 8, Part 4, Health Statistics.

(2) (a) The division may only use an individual's personally identifiable health data from a blood and urine test in connection with:

(i) an administrative hearing involving that individual;

(ii) in accordance Title 63G, Chapter 4, Part 3, Agency Review, an agency review of the administrative hearing described in Subsection (2)(a)(i); or

(iii) in accordance Title 63G, Chapter 4, Part 4, Judicial Review, a judicial review of the administrative hearing described in Subsection (2)(a)(i).

(b) (i) The division shall aggregate and anonymize data from a blood and urine test.

(ii) The division may only use the anonymized and aggregated data from blood and

urine tests:

(A) to create a report required or requested by the Legislature; or

(B) to create statistical reports for criminal justice agencies.

(3) The division shall securely retain each blood and urine test as a private record as provided in Title 63G, Chapter 2, Government Records Access and Management Act.

(4) The division may provide the information from a blood and urine test received under this section:

(a) to the individual who is the subject of the blood and urine test;

(b) to the individual's attorney in connection with an administrative proceeding before the division; or

(c) as otherwise required by law.

Section 8. Section **53-25-102** is enacted to read:

53-25-102. Standards for oral fluid and portable breath tests -- Rulemaking.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to establish standards for the proper use of oral fluid and portable breath testing as part of a field sobriety test.

(2) Each law enforcement agency shall provide training to ensure that:

(a) oral fluid and portable breath testing techniques and practices comply with the rules described in Subsection (1); and

(b) oral fluid and portable breath testing equipment is used in a manner consistent with manufacturer and industry standards.

Section 9. **Effective date.**

This bill takes effect on May 1, 2024.